

REMARKS

Claims 1-16 stand rejected. With this Response, no claims are added canceled, or amended. Accordingly, claims 1-16 remain at issue.

I. Applicant's Declaration Under 37 C.F.R. 1.131

The Examiner contends that Applicant's Declaration under 37 C.F.R. 1.131 is ineffective to overcome the effective filing date of *Rouse* et al. (U.S. Patent Pub. 2002/0087260, hereinafter "*Rouse*"). The Examiner contends that the evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of *Rouse* (the effective filing date of December 29, 2000) to either a constructive reduction to practice or actual reduction to practice of the present invention. The Examiner states that the Declaration and supporting exhibit fail to clearly explain which facts or data Applicant is relying upon to show due diligence. In response, Applicant submits herewith a supplemental exhibit, Exhibit B, to demonstrate, by factual representation, that Applicant and his representatives acted with due diligence to constructively reduce the invention to practice from a date prior to the *Rouse* reference to the filing date of the present application. Applicant respectfully requests that the Examiner consider Exhibit B as a supplemental evidentiary exhibit to Applicant's Declaration, previously submitted.

The diligence of attorney in preparing and filing patent application inures to the benefit of the inventor. MPEP § 2138.06. Reasonable diligence is all that is required of the attorney. Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. *Bey v. Kollonitsch*, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986). A documentation of attorney work is sufficient to establish reasonable due diligence. *Ex parte Ovshinsky*, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989). Exhibit B include 9 pages of

correspondence from Applicant's representative to Applicant that demonstrate due diligence on the part of Applicant's representative, which inures to the benefit of Applicant. An explanation of the relevant facts is now provided.

Exhibit A, submitted with Applicant's previously submitted Declaration, shows an invention submission report dated June 1, 2000, and thus shows conception of the invention at least by that date. The invention submission report was distributed to Applicant's representative, from which Applicant's representative drafted a patent application. The first draft of that application was provided to Applicant on August 17, 2000. (See pp. 1-2 of Exhibit B). A second draft of that patent application was provided to Applicant on October 25, 2000. (See pp. 3-4 of Exhibit B). A third draft of that patent application was provided to Applicant on November 29, 2000. (See pp. 5-6 of Exhibit B). A fourth draft of that patent application was provided to Applicant on December 6, 2000. (See pp. 7 of Exhibit B). A fifth draft of that patent application was provided to Applicant on December 7, 2000. (See pp. 8 of Exhibit B). The application was then filed on January 2, 2001. (See pp. 9 of Exhibit B). Moreover, Applicant notes that the Patent Office was closed between the filing date of the *Rouse* reference and the filing date of the present application, thus prohibiting Applicant from filing during this period. Given a normal attorney backlog, and the Patent Office being closed, Applicant submits that any delay between a time prior to the effective date of *Rouse* and the filing of the present application was reasonable.

Accordingly, Applicant respectfully submits that the showing of the facts is sufficient to establish conception and reasonable diligence prior to the effective date, and therefore the declaration is sufficient to remove *Rouse* as a prior art reference.

II. 35 U.S.C. § 102 Anticipation Rejection of Claims

Claims 1-16 are rejected under 35 U.S.C. § 102(e) as being purportedly anticipated by *Rouse*. Applicant respectfully traverses this rejection.

Regarding claims 1-16, Applicant submits herewith a supplemental exhibit to the declaration under 37 C.F.R. § 1.131 signed by the inventor showing prior conception of Applicant's invention before the effective date of the *Rouse* application. Exhibit B proves subsequent reasonable diligence in reducing to the invention to practice from a date before the filing date of the *Rouse* application and the filing date of the present application.. Accordingly, Applicants respectfully submit that claims 1-16 are patentable over the *Rouse* Application.

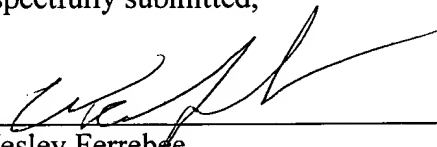
III. Conclusion

In view of the above remarks, Applicant submits that all claims are allowable over the cited prior art, and respectfully requests early and favorable notification to that effect.

Respectfully submitted,

Dated: October 24, 2006

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